

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JESSICA BOLTON,

Plaintiff,

v.

**GAVIN NEWSOM, GOVERNOR OF THE
STATE OF CALIFORNIA; KATHLEEN
ALLISON, SECRETARY OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION; DANIEL PARAMO;
MARCUS POLLARD; SERGIO BUSTOS;
GABRIEL LOPEZ; JOSE VALENCIA; ALLEN
BOWMAN; AND EMMANUEL RAMIREZ.**

Defendants.

Case No. 4:21-cv-3466-YGR

**ORDER GRANTING DEFENDANTS' MOTION
TO DISMISS AMENDED COMPLAINT**

Dkt. No. 33

Plaintiff Jessica Bolton is a mental health professional and staff psychologist at the Richard J. Donovan Correctional Facility ("RJD"), which is part of the California Department of Corrections and Rehabilitation ("CDCR"). (*See* Dkt. No. 31, ¶ 1) ("Amended Complaint" or "Am. Compl.") This action arises out of alleged retaliation against plaintiff after she witnessed and reported officers using excessive force on an inmate. (*Id.* ¶ 2.) Plaintiff brings this action against defendants Governor Gavin Newsom; Kathleen Allison, (collectively, "government defendants"), Daniel Paramo, Marcus Pollard, Sergio Bustos, Gabriel Lopez, Jose Valencia, Allen Bowman, and Emmanuel Ramirez (collectively, "custodian staff defendants"). (*Id.* ¶¶ 8-17.) Plaintiff brings eight claims for relief: (1) illegal intrusion on First Amendment right to free speech in violation of 42 U.S.C. § 1983; (2) retaliation for exercising First Amendment speech, *Monell* action-based on official policy, practice, or custom in violation of 42 U.S.C. § 1983; (3) retaliation for exercising free speech, *Monell* action-based on act of final policymaker in violation of 42 U.S.C. § 1983; (4) retaliation for exercising free speech, *Monell* action-based on ratification in violation of 42 U.S.C. § 1983; (5) retaliation for exercising free speech, *Monell* action-based on policy of failure to train or supervise in violation of 42 U.S.C. § 1983; (6) retaliation in violation

of California Labor Code § 1102.5; (7) intentional infliction of emotional distress; and (8) negligent infliction of emotional distress. (*See Am. Compl.*)

Having once considered a motion to dismiss, now before the Court is the government defendants' motion to dismiss all claims in the first amended complaint. (*See Dkt. No. 33.*) The matter was fully briefed by the parties. (*See also Dkt. Nos. 37 and 39.*)

The Court has carefully considered the papers submitted and the pleadings in this action, and for the reasons set forth below, it **GRANTS** the government defendants' motion to dismiss **WITHOUT LEAVE TO AMEND**.¹

A local government cannot be sued under Section 1983 for an injury inflicted solely by its employees or agents. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). The government must have some direct role in the injury. In other words, local government cannot be held liable under Section 1983 on a respondeat superior theory. *Id.* at 659. The Ninth Circuit has found local government liable under Section 1983 when the government is responsible for the execution and/or enforcement of a policy or custom that inflicts the injury, the government's own action or inaction in the training, supervision, or control of the subordinates leads to the injury, or if the government sets in motion a series of acts, or by refusing to terminate a series of actions by others, which the defendant knew, or should have known, would cause injury. *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011); *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted); *Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 968 (9th Cir. 2001).

Plaintiff avers that the government defendants had actual knowledge of the retaliation that she was experiencing but they failed to act. (Dkt. No. 37) ("Opposition" at 5.) In arguing such, plaintiff points to her own testimony in the ongoing litigation in *Armstrong et al. v. Gavin Newsom et al.*, No. C94-2307. Plaintiff alleges the following in her complaint: that defendant Newsom and CDCR were defendants in the *Armstrong* matter; that she was deposed in *Armstrong*

¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this motion appropriate for decision without oral argument. Accordingly, the Court **VACATES** the motion hearing set for **NOVEMBER 2, 2021**.

1 and questioned by the Attorney General's office who was acting to defend defendant Gavin
 2 Newsom and CDCR; that she was questioned in her deposition about matters included in her
 3 federal complaint, including the unlawful use of force at RJD; that she testified that she was
 4 subjected to retaliation after reporting unlawful conduct; that Newsom, Allison, Paramo, and
 5 Pollard failed to take any actions in response to her testimony; and that defendant Allison was
 6 aware or should have been aware of the retaliation complained of because she was previously the
 7 Director of Division of Adult Institutions (DAI) from 2016 to 2018 and then was the
 8 Undersecretary of Operations for CDCR before becoming Secretary for the CDCR in 2020. (Am.
 9 Compl. ¶¶ 26, 70-71, 83-85, 125.)

10 Plaintiff's complaint generally repeats the allegations about the *Armstrong* case from
 11 plaintiff's original complaint and asks the Court to infer the government defendants' knowledge of
 12 the issues and conduct in this case based on the conduct in *Armstrong*. While plaintiff's amended
 13 complaint now alleges that she testified about the retaliation she faced at RJD, those facts are
 14 insufficient to show a causal link between her testimony and any actions, or inactions, by the
 15 government defendants. The Court finds that plaintiff's allegations that defendants had general
 16 knowledge of the lawsuit and by extension that officers were engaging in misconduct and that she
 17 testified about the retaliation she was experiencing, are not sufficient to state a claim against the
 18 government defendants. Allegations need to be personal to the defendant.

19 Plaintiff's cited authority does not change the result. Of the cited cases finding a Section
 20 1983 claim, the cases held that defendants were directly involved in the unconstitutional conduct,
 21 either by way of policy, direct involvement, or failure to supervise. *See Starr v. Baca*, 652 F.3d
 22 1202, 1205 (9th Cir. 2011) (finding supervisor liable for section 1983 claim where complaint
 23 included allegations that the supervisor received clear written notice of the alleged conduct in an
 24 investigation report and received weekly reports from subordinates responsible for conduct);
 25 *Dobbs v. Richardson*, 614 F.3d 1185, 1204 (10th Cir. 2010) (finding that defendant was liable for
 26 Section 1983 claim where defendant was personally involved in the policy-making at the local
 27 jail); *Snell v. Tunnell*, 920 F.2d 673, 700-01 (10th Cir. 1990) (finding a causal link between
 28 defendants' act of signing altered reports and making baseless allegations against plaintiffs and the

1 constitutional deprivation of plaintiffs' rights). Such specific allegations of knowledge or
2 involvement are missing from plaintiff's complaint.


3 The other cases cited actually found no Section 1983 violation where, as here, the
4 defendant was not involved in the alleged misconduct and do not apply otherwise. *See Alton v.*
5 *Texas*, 168 F.3d 196 (5th Cir. 1999) (finding that subordinate's conduct could not be directly
6 imputed to university officials); *Johnson v. Duffy*, 588 F.2d 740, 744 (9th Cir. 1978) (relevant to
7 theory of vicarious liability related to state claim, not 1983 claim); *Ciampi v. City of Palo Alto*,
8 790 F. Supp. 2d 1077, 1105 (N.D. Cal. 2011) (granting defendant's motion for summary
9 adjudication of plaintiff's Section 1983 claim against local municipality).

10 Accordingly, the Court finds that plaintiff has not alleged sufficient facts to show how the
11 government defendants participated, directed, or had any knowledge of the alleged conduct in the
12 complaint. For the foregoing reasons, the Court **GRANTS** the government defendant's motion to
13 dismiss **WITHOUT LEAVE TO AMEND**.

14 This Order terminates Docket Number 33.

15 **IT IS SO ORDERED.**

16 Dated: October 28, 2021

17 
18 YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of California